

RD AN No. 3865(1980-D)  
May 26, 2003

TO: State Directors  
Rural Development

ATTENTION: Rural Housing Program Directors,  
Rural Development Managers and Community Development Managers

FROM: Arthur A. Garcia *(Signed by Arthur A. Garcia)*  
Administrator  
Rural Housing Service

SUBJECT: Single Family - Guaranteed Rural Housing  
Future Recovery of Real Estate Owned Sale Proceeds

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to clarify RD Instruction 1980-D requirements for the future recovery of sale proceeds when Real Estate Owned property (REO) held by the guaranteed lender sells at a higher price than the appraised value used to estimate a loss on unsold REO.

**COMPARISON WITH PREVIOUS AN:**

This is a replacement of AN 3697, issued January 23, 2002, that expired October 31, 2002.

**BACKGROUND:**

To control the cost of REO property management and disposition and encourage its expeditious sale, RHS establishes a settlement date for loss claims. For REO sold within six months of the acquisition date (the date of foreclosure sale or deed-in-lieu recordation), the settlement date is the date of the REO sale. For REO unsold during that time period, the settlement date is six months from the acquisition date, unless a thirty-day extension is authorized by RHS for a property under a sale contract. In any case, when the settlement date is reached, allowable interest accrual ceases and the loss claim must be filed within 30 days.

EXPIRATION DATE:  
March 31, 2004

FILING INSTRUCTIONS:  
Preceding RD Instruction 1980-D

The basic loss claim calculation is the total debt owed the lender less the security property sale proceeds. The total debt includes unpaid principal, authorized protective advances, interest accrued through the settlement date, foreclosure expenses, and REO management and resale expenses. In order to have a loss claim based on actual REO expenses and sale proceeds, REO must be sold within six months of the acquisition date. A loss claim on unsold REO is based on estimated net sale proceeds, using an estimated sale price and estimated REO expenses.

For a claim calculation on unsold REO, the estimated sale price is based on a third-party liquidation value appraisal obtained by the Agency. A liquidation value is used because it takes into consideration the market pressures on a distressed property. This appraised value is multiplied by a cost factor to estimate REO expenses. The cost factor, developed and updated periodically by the Veterans Administration (VA), is based on a three-year average of VA acquired property operating expenses, selling expenses, and administrative expenses. The factor also takes into consideration the cost of repairs to bring the property to minimum property standards. For example, a loss claim based on an estimated sale price of \$76,500, multiplied by the current factor of 11.87 percent, reimburses the lender \$9,080.55 for estimated REO property management and disposition expenses.

When the REO associated with a claim based on estimated sale proceeds is ultimately sold, the actual contract sale price may be higher than the appraised value used for the claim. If so, the difference (between the sale price and the appraised value) is considered future recovery to be shared between the Agency and the lender at the same ratio as the estimated loss. Attachment 1 is an example of a future recovery calculation for the unsold REO in the above example.

When the lender reports an actual sale price that results in future recovery, the lender may document and deduct certain REO costs that were not considered in the original claim. A HUD-1, Settlement Statement, normally provides the necessary documentation, but other similar documentation may be used. The combined deduction cannot exceed the difference between the actual contract sale price and the estimated sale price (appraised value) used for the claim. The following items may be deducted from future recovery of sale proceeds:

- costs of additional property improvements that directly resulted in an increased property value and sale price. These additional cost allowances are not for repairs made subsequent to the claim settlement, or improvements which were already considered in the estimated sale price or appraised value used for the claim.
- additional real estate commission based on the difference between the actual contract sale price and the estimated sale price (appraised value) used for the claim, and
- additional seller concessions that directly resulted in an increased sale price. This additional cost allowance is only for seller concessions that are above what is typical and customary for the area and were offset by an increased sale price.

When made aware of future recovery, RHS will prepare a future recovery worksheet (included in the Automated SF-GRH Loss Claim package referenced below) and notify the lender of the future recovery due to RHS. When the payment is received from the lender, RHS will report the future recovery and remit the payment according to the User's Guide for the Automated SF-GRH Loss Claim Process-Future Recovery Calculator, that was previously distributed to all state offices. Copies are available from the SFH Guaranteed Loan Division.

### **IMPLEMENTATION RESPONSIBILITIES:**

The following procedures supplement the regulation presently in place. Please review these policies and procedures with all staff members responsible for SF-GRH loss claim processing and assure that they are implemented uniformly within your jurisdiction.

1. When an estimated claim is paid, advise the lender, servicer, or payee, as appropriate, of the following: (a) the estimated sale price (appraised value) used to calculate the claim, (b) that future recovery may be due if the actual sale price exceeds the estimated sale price, (c) when and how to report future recovery of sale proceeds, and (d) the consequences of failure to report future recoveries (increased RHS monitoring and possible termination of lender eligibility).
2. Flag claims that were paid based on estimated sale proceeds and contact the lender 6 months later to inquire about the REO status if the actual sale information has not been received. Request the lender to submit a HUD-1, Settlement Statement, or similar document as verification of the sale amount. Follow-up should continue until the sale information is received.
3. For Nationally-approved lenders, report non-compliance with requests for sale information or payment of future recovery to the National Office, SFH Guaranteed Loan Division.
4. For State-approved lenders, consider non-compliance with requests for sale information or payment of future recovery as grounds for a lender monitoring review under RD Instruction 1980-D, §1980.309(g)(3).
5. Review compliance with future recovery provisions in conjunction with lender monitoring reviews under RD Instruction 1980-D, §1980.309(g). The National Office is responsible for Nationally-approved lender monitoring. State Offices are responsible for State-approved lender monitoring.
6. Attachment 2, "GRH Lender Monitoring Checklist - Servicing Requirements, Property Management and Sale - Future Recovery," may be used to review compliance with future recovery provisions.

Questions on future recovery may be directed to Joyce M. Halasz or Jenise Hight of the SFH Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Ave., SW, STOP 0784, Washington, DC 20250-0784. The telephone number is (202) 720-1452.

Attachments

BORROWER NAME:	Doe, J.
RHS CASE NUMBER (99-99-999999999 Format):	00-00-000000000
LENDER LOAN NUMBER:	
LENDER TAX ID NO. (9 digit number):	00-0000000
LENDER NAME:	Giant S&L
DATE OF ORIGINAL LOSS CLAIM (mm/dd/yyyy):	4/1/2001
SEE THE "USER'S GUIDE" FOR COMPLETE INSTRUCTIONS ON USING THE "FUTURE RECOVERY CALCULATOR"	
TOTAL LOSS (Form RD 1980-20, Item 33, or Item 50 if additional interest was paid)	\$21,238.13
TOTAL COMPUTED LOSS PAYABLE (Form RD 1980-20, Item 38 or Item 55 if Additional Interest paid)	\$21,238.13
ORIGINAL LOAN AMOUNT (Item 27 of Form RD 1980-20)	\$85,000.00
APPRAISED VALUE (Item 23 of Form RD 1980-20)	\$76,500.00
AMOUNT REO PROPERTY WAS SOLD TO THIRD PARTY (Contract Price)	\$79,000.00
DIFFERENCE BETWEEN APPRAISED VALUE AND AMOUNT SOLD TO 3rd PARTY (Automated)	\$2,500.00
ALLOWANCE FOR ADDITIONAL COMMISSIONS AT 6% (Based on above result) (Automated)	\$150.00
COST OF CAPITAL IMPROVEMENTS DIRECTLY RESULTING IN AN INCREASED SALE PRICE	
ADJUSTED SALE PRICE (Automated)	\$78,850.00
NET DIFFERENCE BETWEEN APPRAISED VALUE AND ADJUSTED SALE PRICE TO 3rd PARTY (Automated)	\$2,350.00
OTHER RECOVERY NOT IN ORIGINAL CLAIM (Judgment, Insurance claim, etc.)	
SUM OF PREVIOUSLY REPORTED RECOVERY (Not included in original Claim)	
SUM OF PREVIOUSLY REPORTED RECOVERY PAID TO RHS	
35% of ORIGINAL LOAN AMOUNT (Automated)	\$29,750.00
TOTAL AMOUNT OF LOSS > 35% OF LOAN (Automated)	\$0.00
TOTAL AMOUNT OF RECOVERY (Automated)	\$2,350.00
<b><u>ALLOCATION OF RECOVERY:</u></b> <b><u>Split between RHS and Lender</u></b>	
RHS's 85% OF AMOUNT OF RECOVERED LOSS > 35% OF LOAN (Automated)	\$0.00
LENDER'S 15% PORTION OF LOSS > 35% OF LOAN (Automated)	\$0.00
<b><u>SUMMARY OF TOTAL TO RHS:</u></b>	
RHS's 100% of the Difference Between Total Recovery & Loss over 35% (Automated)	\$2,350.00
RHS's 85% OF SPLIT (Automated)	\$0.00
(LESS) PREVIOUS RECOVERY PAYMENTS MADE TO RHS (Automated)	\$0.00
<b>AMOUNT LENDER TO PAY RHS (Maximum capped at Total Loss) (Automated):</b>	<b>\$2,350.00</b>

GRH Lender Monitoring Checklist - Servicing Requirements

Lender Name

Date:

Reviewer:

Borrower Name

RHS Case No.

Property Management and Sale - Future Recovery

- A. Population - All SF-GRH loss claims paid on REO unsold at the time of the claim, since the last review.
- B. Sample - Select the greater of 5 or 10%.

Complete the checklist to assess whether the lender has met the minimum GRH servicing standards for future recovery of REO sale proceeds.

Question	Y/N/NA	Notes
1. Did the lender report the REO sale and future recovery, if any, within 30 days of the sale?		
2. When advised of future recovery due, did the lender promptly remit it?		